

United States v. Smiley, et al., [27 F. Cas 1132 \(C.C.N.D. Ca. 1864\)](#).

Location: Foreign territorial sea; Grounding within 3 nautical miles of Mexico's coast.

Applicable Law: [Plunder of Distressed Vessel \(18 U.S.C. § 1658\)](#)

Where Law Applies: *Plunder of Distressed Vessel*: Applies in all maritime zones subject to U.S. admiralty and maritime jurisdiction, including the exclusive economic zone and high seas. Here, the law applies beyond the high seas in foreign territorial sea.

Holding:

- 1) Until goods from a wrecked vessel are removed from the place where they landed or were thrown ashore, or cease to be under the charge of interested parties, the statute applies. The same is true even if the vessel has gone entirely to pieces and disappeared from the sea in the meantime. However, the statute is not intended to reach voluntarily abandoned property.
- 2) U.S.-flagged vessels are under constructive U.S. jurisdiction while outside of actual U.S. jurisdiction; however, this jurisdiction ceases once a vessel is destroyed so that "not a vestige of the vessel remain[s]."

General Facts:

The steamer *Golden Gate*, belonging to the Pacific Mail Steamship Company, left San Francisco for Panama on July 21, 1862, with 338 passengers and crewmen, as well as \$1,450,000. On July 27, 1862, the ship caught fire within 3.5 miles of the Mexican coast and headed for shore, wrecking on a sand shelf about 250 feet from shore. Only 140 people onboard were saved and the treasure sunk about 40 feet inside the wreck which subsequently went to pieces under the heavy surf. The underwriters and a few parties of capitalists separately employed vessels over the next month to retrieve the treasure, ultimately recovering all but \$574,000, which the parties did not believe could be recovered.

In September 1862, the defendant Smiley obtained a license from the Mexican government to explore for the lost treasure and set out on a four-month expedition, followed by a second trip, with more complete equipment than previous vessels. Smiley's crew ultimately recovered \$336,000 primarily from an area 150 feet from Mexico's shore beneath 6-9 feet of water and an additional 6-9 feet of sand, lying on a hard clay stratum in wooden boxes. Upon Smiley's return to San Francisco, the shippers made a claim to the money, but the parties could not agree as to the amount of reward for the recovery. As a result, a complaint was made against Smiley and his company, and in March 1864, they were indicted under the 9th section of the Crimes Act of 1825.

Procedural Posture:

A demurrer was interposed to the indictment of the defendant, Smiley, under section 9 of the Crimes Act of 1825. “[T]he indictment was generally regarded as persecution” since the expedition was open and all other recovery efforts had been abandoned. As such, the facts were deemed admitted and upon them, the following questions were presented to the Circuit Court for the Northern District of California¹: (1) whether the statute applied to a case where the taking of property occurred after the vessel had gone to pieces and disappeared; and (2) if the statute did cover such a case, whether the Circuit Court had jurisdiction to try an offense committed within one marine league (three nautical miles) of the shores of Mexico. The questions were argued to the Court upon the stipulation that if the act did not apply to the case or if the Court did not have jurisdiction, that the demurrer be sustained.

Section 9 of the Crimes Act of 1825² (currently Plunder of Distressed Vessel (Plunder Statute), 18 U.S.C. § 1658) states:

That, if any person or persons shall plunder, steal, or destroy, any money, goods, merchandise, or other effects, from or belonging to any ship or vessel, or boat, or raft, which shall be in distress, or which shall be wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks, of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, . . . every person, so offending, his or her counsellors, aiders, and abettors, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and imprisonment and confinement to hard labour, not exceeding ten years, according to the aggravation of the offence.

Court Holding and Reasoning:

On the first issue, the Court found “until the goods are removed from the place where landed, or thrown ashore, from the stranded or wrecked vessel, or cease to be under the charge of the officers or other parties interested, the act would apply if a larceny of them were committed, even though the vessel may in the meantime have gone entirely to pieces and disappeared from the sea.”³ The Court differentiated this case, however, in that section 9 was not intended to reach recovery efforts aimed at abandoned property. Here, property was no longer in the charge of the

¹ California was admitted as a state on September 9, 1850, and was initially divided into two districts, Northern and Southern, by Act of Congress (9 Stat. 521). The creating act provided that the two district courts had the ordinary jurisdiction and powers of a U.S. district court and were also invested with the concurrent jurisdiction and power then in the circuit courts. Appeals were made to the U.S. Supreme Court. President Fillmore appointed Judge Hoffman, the district judge in this case, as the northern district judge in 1851.

² [An Act of March 3, 1825](#), *An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes*, 18 Cong. ch. 65, § 9, 4 Stat. 116.

³ *United States v. Smiley*, 27 F. Cas. at 1134. The Court determined that the statute should also “extend to goods which . . . men of a stranded or wrecked vessel had succeeded in getting ashore, so long as a claim is made by them to the property, though before its removal the vessel may have been broken up.” *Id.*

ship's officers, owners, or insurance underwriters and was voluntarily left to the sea by interested parties after a determination by the same that all possible recovery efforts were made.⁴

As to whether the Court had jurisdiction over the recovery of treasure buried in the sand, several feet below water, within 150 feet of Mexico's coast, the Court found that a country has "complete and exclusive" jurisdiction over acts within one marine league of its shore that were not done on the vessel of another nation. Unless a statute clearly indicates the extraterritorial character of the act, U.S. criminal jurisdiction, actual or constructive, is limited to its own territory. Under constructive U.S. jurisdiction, a vessel sailing under the U.S. flag carries with it U.S. law, and a violation of such by officers and persons aboard may result in punishment. Here, the act occurred within Mexico's jurisdiction and "not a vestige of the vessel remained" in Mexican waters to claim that the act occurred on a vessel of another nation. Thus, the act occurred outside of the jurisdiction of the United States and this statute.

⁴ *Id.* The Court stated, "In our judgment the act was no more intended to reach cases where property thus abandoned is recovered, than to reach property voluntarily thrown into the sea, and afterwards fished from its depths." *Id.*